

3. Defendant Ellen D. Anderson was served with the Complaint on August 16,

2017. This Notice of Removal is timely filed pursuant to 28 U.S.C. Section 1446(b).

## **II. Diversity of Citizenship**

4. The plaintiff admits that Ms. Anderson is a resident of Cherokee County, Georgia. (Exhibit “A”).

5. The co-defendant to this case, State Farm Mutual Automobile Insurance Company, is an Illinois corporation with its principle place of business in Bloomington, Illinois. State Farm consents to the removal of this action. (Letter from counsel of record for State Farm, attached hereto as Exhibit “C”).

6. This action is one of a civil nature over which the District Court of the United States has original jurisdiction because of diversity of citizenship, pursuant to 28 U.S.C. Section 1332.

7. The matter in dispute in Plaintiffs’ Complaint exceeds the sum of Seventy-Five Thousand and no/100 Dollars (\$75,000.00), exclusive of interest and costs.

## **III. Amount in Controversy**

8. Plaintiff’s Complaint does not specify the total amount of damages sought. However, when the amount of monetary damages is not specified in the Complaint, “a removing defendant need not prove to a legal certainty that the plaintiff’s claims must exceed the jurisdictional amount; rather he bears the lighter burden to prove merely by a ‘preponderance of the evidence that the amount in controversy more likely than not exceeds the . . . jurisdictional requirement.’” *Lindsay v. American Gen. Life Acc. Ins. Co.*, 133 F. Supp. 2d. 1271, 1276 n. 5 (N.D. Ala. 2001)(quoting *Tapscott v. MS Dealer Service Corp.*,

77 F.3d. 1353, 1357 (11<sup>th</sup> Cir. 1996), *overruled on other grounds* by *Cohen v. Office Depot*, 204 F.3d. 1069 (11<sup>th</sup> Cir. 2000)).

9. Plaintiff seeks punitive damages, reimbursement for medical expenses, which already total in excess of \$34,000 according to plaintiff's counsel, emotional distress, mental anguish, and pain and suffering.

10. As further evidence the amount in controversy exceeds the jurisdictional limits, the plaintiff has sued not only Ms. Anderson, but also her own underinsured motorist carrier, State Farm. The Complaint alleges that Ms. Anderson does not have enough insurance to fully compensate the plaintiff for the damages claimed in this case. The plaintiff has done this knowing that Ms. Anderson's insurance limits are above the jurisdictional minimum required for diversity jurisdiction.

11. Finally, counsel for Ms. Anderson sent counsel for the plaintiff a limiting affidavit wherein the plaintiff was asked to confirm they were seeking to recover an amount less than the jurisdictional minimum required for diversity jurisdiction (See email and limiting affidavit, attached hereto as Exhibit "D"). Counsel for the plaintiff has notified counsel for this defendant the plaintiff is unwilling to sign the limiting affidavit.

12. At this point in the litigation, the plaintiff and her respective counsel possess more knowledge than this defendant concerning the harm alleged and the extent of their recoverable damages. The fact the plaintiff has sued her own insurance company, alleging that Ms. Anderson does not have enough insurance to compensate her for the injuries she has allegedly suffered is *prima facie* evidence the amount in controversy exceeds the

jurisdictional minimum required for diversity jurisdiction because Ms. Anderson's insurance limits are above \$75,000. This, coupled with the refusal of the plaintiff to sign a limiting affidavit satisfy this defendant's burden regarding the amount in controversy.

#### **IV. Conclusion**

WHEREFORE, PREMISES CONSIDERED, Ms. Ellen D. Anderson moves this Court to accept the removal of this case to the United States District Court for the Northern District of Alabama, Southern Division, and asks that this Court make the proper Orders to effect the removal of this case from the Circuit Court of Jefferson County, Alabama. This defendant also respectfully requests that this Court will enter any other Orders as may be appropriate to effect the preparation and filing of a true record in this cause of all proceedings that may have been had in said Circuit Court.

Respectfully Submitted,

/s/ J. Michael Bowling

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the above and foregoing pleading upon all counsel of record, via the Alabama electronic filing system, electronic mail, and/or U.S. Mail, first class postage prepaid and properly addressed, on this the 15<sup>th</sup> day of September, 2017.

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/s/ J. Michael Bowling  
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